

## Article - Health - General

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§19–346.

(a) (1) In this section the following words have the meanings indicated.

(2) “Abuse of funds” means using the assets or income of a resident:

(i) Against the express wish of the resident, if the expenditure was not necessary for the direct and immediate benefit and welfare of the resident; or

(ii) For the use or benefit of a person other than the resident if the expenditure is not also for the direct and immediate benefit of the resident or consistent with an express wish and past behavior of the resident.

(3) “Bank” means a bank, trust company, savings bank, or savings and loan association that:

(i) Is authorized to do business in this State; and

(ii) Is insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the State of Maryland Deposit Insurance Fund Corporation.

(4) “Facility” means:

(i) A hospital that is classified as a special hospital; or

(ii) A related institution.

(b) This section provides rights and remedies in addition to, and not in derogation of, any right or remedy that a resident of a facility has under any other law.

(c) Each resident of a facility may:

(1) Keep control over personal financial transactions unless:

(i) A court adjudicates the resident as a disabled person, in accordance with Title 13 of the Estates and Trusts Article; or

(ii) The Social Security Administration designates a representative payee to receive the Social Security funds for the use and benefit of the resident; and

(2) Choose any person, including the administrator of the facility or a designee of the administrator, to handle the financial transactions.

(d) (1) Each facility shall have adequate safeguards for property of a resident that is entrusted to the facility.

(2) (i) A facility to which money is entrusted shall deposit the money in an account if the facility cannot keep the money safely.

(ii) If the facility is operated by a State, county, or municipal agency and one resident entrusts more than \$300 to the facility, the facility shall deposit the amount in excess of \$300.

(iii) If the facility is operated by a person other than a State, county, or municipal agency and one resident entrusts more than \$100 to the facility, the facility shall deposit the amount in excess of \$100.

(iv) If the total amount of money that is entrusted to the facility by its residents exceeds \$50 per resident, the facility shall deposit the amount in excess of \$50 per resident or \$1,000, whichever is less.

(3) A facility that is a related institution caring for individuals and whose administrator or bookkeeper has control over or access to the funds of a resident of the facility shall provide, as determined by the Department, either:

(i) A bond in an amount the Department requires;

(ii) A letter of credit equal to 3 times the average yearly balance of funds of all residents of the facility; or

(iii) Self-insurance if the net worth of the facility is at least 3 times the average yearly balance of funds of all residents of the facility.

(e) (1) A facility shall keep the accounts of its residents separate from the accounts of the facility.

(2) A facility that is operated by a person other than a State, county, or municipal agency shall:

(i) Establish a separate account with a bank in the name of each resident who entrusts more than \$100 to the facility; and

(ii) Deposit other money that the facility is required to deposit, in either:

1. A separate account in the name of the resident; or

2. An account that is designated "General Fund of the Participating Residents of the (name of facility)".

(3) If the facility is operated by a State, county, or municipal agency, the facility may establish any required accounts with a bank or with the State, county, or municipal treasurer.

(f) (1) The accounts established by facilities shall be interest bearing accounts.

(2) All interest on money of a resident shall be credited to the resident.

(3) The State Treasurer or a county or municipal treasurer shall:

(i) Credit interest to the total account at a rate that equals the average interest rate on short term investments of the government; and

(ii) Allocate the interest among each resident participating in the account in proportion to the resident's participation in the total account.

(g) (1) A resident may get money as follows:

(i) If the facility has the money in possession, during the business hours of the facility; or

(ii) If a bank or the State or a county or municipal treasurer holds the money, within 3 banking days.

(2) A resident may give a licensed employee of the facility a limited power of attorney for the account of the resident. The Department shall prescribe the form to be used for this limited power of attorney.

(h) A facility may:

(1) Include in its operating costs the cost of establishing and servicing accounts for private, State, and federally funded residents; and

(2) Recover the cost through a daily or monthly charge for care or as provided in rules or regulations that the Secretary of Health and Human Services adopts under the Social Security Act.

(i) (1) A facility:

(i) Shall make an accounting of money of a resident to the resident or personal representative of the resident; and

(ii) In accordance with Department rules and regulations:

1. Shall keep, at the facility, records of all transactions with money of residents; and

2. Shall be subject to audit.

(2) Each facility that, under the rules and regulations of the Department, is a comprehensive care facility or an extended care facility shall:

(i) Have a monthly accounting available for inspection; and

(ii) Provide a quarterly statement on money of a resident:

1. To the resident; or

2. To a person exercising the right of the resident under § 19–344(r) of this subtitle.

(j) (1) If a facility discharges a resident, the facility shall:

(i) Return, on demand, the money of the resident that the facility has in possession to the resident or a designee of the resident if the resident or designee signs a receipt; and

(ii) Make the money of the resident in an account with a bank or the State, county, or municipal treasurer available to the resident or designee within 3 banking days.

(2) (i) This paragraph does not apply to a resident who is transferred temporarily to an acute care facility.

(ii) If a facility discharges a resident and the facility is the representative payee of the resident, the facility shall:

1. Promptly seek designation of a new representative payee; and

2. Transfer all money of the resident to the new representative payee.

(k) (1) If a resident has been absent from a facility for 1 year, the facility shall make reasonable attempts to find the resident or the personal representative or heirs of the resident to turn over the property of the resident unless the resident or the attending physician of the resident gives the facility written notice that the resident:

(i) Is expected to be readmitted to the facility; and

(ii) Wants the facility to continue to hold the property.

(2) All property and any income from property that a facility holds for a discharged or deceased resident are presumed abandoned in accordance with Title 17 of the Commercial Law Article, if the property and income are not claimed by the resident, personal representative, or heir within 1 year.

(l) (1) If the ownership of a facility changes, the transferor shall give the transferee a certified written audit of all funds that residents have entrusted to the facility.

(2) The transferee shall give to the transferor a signed receipt acknowledging the receipt of the accounts.

(m) A resident is not liable for any act or omission of the facility concerning the finances of the facility or the resident.

(n) (1) A person, including the legal representative of the resident, may not use the assets or income of a resident for any purpose that is not authorized by the resident, a designee, or a legal representative, including a representative payee of the resident.

(2) (i) A person may make a written or oral complaint if the person believes that there has been an abuse of funds.

(ii) The complaint shall set forth each reason for the belief that there has been an abuse of funds and any facts that the complainant has to support the complaint.

(iii) The complaint shall be made:

1. To the local department of social services for the county where the facility is located; or

2. If the patient is 65 years old or older, to the Secretary of Aging.

(3) The recipient of the complaint shall:

(i) Immediately give the administrator of the facility written notice of the complaint, unless the administrator is the alleged abuser and the recipient believes that the notice would affect an investigation adversely;

(ii) Investigate the complaint, as appropriate; and

(iii) Give the alleged abuser specific notice of the alleged abuse and an opportunity to reply to the charges stated in the complaint.

(4) On request of the Secretary of Aging or the local department of social services, a State's Attorney shall help in the investigation.

(5) If, after the completion of an investigation, there is probable cause to believe that there has been an abuse of funds, the Secretary of Aging or the local department of social services may:

(i) Refer the matter to the State's Attorney for appropriate action; and

(ii) On behalf of the resident, bring suit to recover the misused money, costs, and attorney's fees.

(6) A person who acts in good faith is not civilly or criminally liable for:

(i) Making a complaint under this subsection;

(ii) Participating in an investigation arising out of a complaint under this subsection; or

(iii) Participating in a judicial proceeding arising out of a report under this subsection.

(o) (1) If there is an abuse of funds, a person who misused the money is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000.

(2) Any person who violates another provision of this section is subject to a fine of \$10,000.

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